



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2021-0249; FRL-10022-26-Region 9]

#### **Rescission of Clean Data Determination and Call for Attainment Plan Revision for the Yuma, AZ 1987 PM<sub>10</sub> Moderate Nonattainment Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to rescind its previously issued clean data determination for the Yuma, Arizona “Moderate” nonattainment area for the 1987 24-hour national ambient air quality standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM<sub>10</sub>) because recent complete, quality-assured monitoring data show that the area has subsequently violated this NAAQS. We are also proposing to find that the Arizona State Implementation Plan (SIP) is substantially inadequate to attain or maintain the PM<sub>10</sub> standard and to call for Arizona to revise the SIP to address this inadequacy.

**DATES:** Any comments must arrive by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2021-0249 at <http://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents

located outside of the primary submission (i.e., on the web, cloud, or other file sharing system).

For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** John J. Kelly, Air Planning Office (AIR-2), EPA Region IX, (415) 947-4151, [kelly.johnj@epa.gov](mailto:kelly.johnj@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we”, “us,” and “our” refer to the EPA.

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## **I. Background**

### *A. The 1987 PM<sub>10</sub> NAAQS*

The EPA sets NAAQS for certain ambient air pollutants at levels required to protect human health and the environment. The primary NAAQS represent ambient air quality standards the attainment and maintenance of which the EPA has determined are requisite to protect public health, including an adequate margin of safety. The secondary NAAQS represent ambient air quality standards the attainment and maintenance of which the EPA has determined are requisite to protect public welfare from any known or anticipated adverse effects associated with the

presence of such air pollutant in the ambient air. PM<sub>10</sub> is one of these ambient air pollutants for which the EPA has established NAAQS. On July 1, 1987, the EPA promulgated two primary standards for PM<sub>10</sub>: a 24-hour standard of 150 micrograms per cubic meter (µg/m<sup>3</sup>) and an annual PM<sub>10</sub> standard of 50 µg/m<sup>3</sup>. The EPA also promulgated secondary PM<sub>10</sub> standards that were identical to the primary standards.<sup>1</sup> Effective December 18, 2006, the EPA revoked the annual PM<sub>10</sub> NAAQS but retained the 24-hour PM<sub>10</sub> NAAQS.<sup>2</sup> Because they are identical, we refer to the primary and secondary 24-hour standards using the single term, NAAQS.

The 24-hour PM<sub>10</sub> NAAQS is attained when the expected number of exceedances, averaged over a three-year period, is less than or equal to one. The expected number of exceedances averaged over a three-year period at any given monitor is known as the PM<sub>10</sub> design value for that site. The PM<sub>10</sub> design value for the nonattainment area is the highest design value from a monitor within that area. The methodologies for calculating expected exceedances for the 24-hour PM<sub>10</sub> NAAQS are found in 40 CFR part 50, appendix K, Section 2.1(a).

#### *B. Designation and Classification of the Yuma PM<sub>10</sub> Nonattainment Area*

Upon enactment of the 1990 Amendments to the Clean Air Act (CAA or “Act”), the Act itself designated specific areas as nonattainment by operation of law, and classified these areas as Moderate.<sup>3</sup> These areas included all former Group I PM<sub>10</sub> planning areas identified in *Federal Register* documents published on August 7, 1987,<sup>4</sup> and October 31, 1990,<sup>5</sup> and any other areas violating the 1987 PM<sub>10</sub> NAAQS prior to January 1, 1989. The EPA published a *Federal Register* document announcing the areas designated nonattainment for PM<sub>10</sub> upon enactment of the 1990 CAA Amendments, known as “initial” PM<sub>10</sub> nonattainment areas, on March 15, 1991.<sup>6</sup> The EPA published a subsequent *Federal Register* document correcting some of these areas on

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<sup>1</sup> 52 FR 24634 (July 1, 1987).

<sup>2</sup> 71 FR 61144 (October 17, 2006).

<sup>3</sup> 42 U.S.C. 7407(d)(4)(B), 7513(a).

<sup>4</sup> 52 FR 29383.

<sup>5</sup> 55 FR 45799.

<sup>6</sup> 56 FR 11101.

August 8, 1991.<sup>7</sup> These nonattainment designations and Moderate area classifications were codified in 40 CFR part 81 on November 6, 1991.<sup>8</sup> The EPA designated as “unclassifiable” all other areas in the Nation not designated nonattainment upon enactment of the 1990 CAA Amendments.<sup>9</sup>

The Yuma PM<sub>10</sub> nonattainment area (“Yuma NAA”) was one of the areas specified by Congress and designated by the 1990 CAA Amendments. Specifically, the Yuma NAA was designated nonattainment by section 107(d)(4)(B)(i) of the Act and classified as Moderate because it had been previously categorized as a Group I area.<sup>10</sup> The EPA announced the Yuma NAA designation, as required by section 107(d)(2) of the Act, on March 15, 1991.<sup>11</sup> In accordance with CAA section 189(a)(2), Arizona was required to submit a SIP revision meeting applicable nonattainment plan requirements by November 15, 1991, demonstrating attainment of the 1987 PM<sub>10</sub> NAAQS in the Yuma NAA by December 31, 1994.<sup>12</sup>

### *C. The Clean Data Policy and the 2006 Clean Data Determination*

In nonattainment areas where monitored data demonstrate that the NAAQS has been attained, the EPA interprets certain requirements of the Act as no longer being applicable for so long as air quality continues to meet the NAAQS in the area. This interpretation is known as the “clean data policy,” and EPA findings issued under this policy are known as “clean data determinations.” On March 14, 2006, the EPA issued a clean data determination for the Yuma NAA for the 1987 24-hour PM<sub>10</sub> NAAQS, based on complete, quality-assured and certified PM<sub>10</sub> monitoring data for 2002-2004.<sup>13</sup> Because the data from 2002-2004 were complete and showed no exceedances of the relevant NAAQS, and because preliminary data for 2005 also indicated no

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<sup>7</sup> 56 FR 37654.

<sup>8</sup> 56 FR 56694.

<sup>9</sup> See CAA section 107(d)(4)(B)(iii).

<sup>10</sup> 52 FR 29383 (August 7, 1987).

<sup>11</sup> 56 FR 11101.

<sup>12</sup> Arizona submitted a Moderate area plan for the Yuma NAA on November 14, 1991. The EPA found this plan to be incomplete on May 14, 1992. Arizona submitted a revised plan for the Yuma NAA on July 12, 1994, but withdrew this plan in 2006, following the EPA’s issuance of a clean data determination for the Yuma NAA.

<sup>13</sup> 71 FR 13021 (March 14, 2006).

such exceedances, the EPA concluded that the Yuma NAA was in attainment for the 1987 24-hour PM<sub>10</sub> NAAQS.<sup>14</sup> Based on this finding, the EPA determined that certain nonattainment plan requirements in the Yuma NAA were not applicable for so long as the Yuma NAA continued to monitor attainment of the 1987 24-hour PM<sub>10</sub> and annual NAAQS.<sup>15</sup>

## **II. Current Monitoring Data**

In accordance with 40 CFR part 50, appendices J and K, a finding of whether an area has attained or is currently attaining the 1987 24-hour PM<sub>10</sub> NAAQS must generally be based upon certified, complete, quality-assured data gathered at monitoring sites in the nonattainment area and entered into the EPA's Air Quality System (AQS) database. For the 1987 24-hour PM<sub>10</sub> NAAQS, appendix K provides that all data produced by state and local air monitoring sites (SLAMS) and other sites submitted to the EPA in accordance with the part 58 requirements be used for evaluating attainment.<sup>16</sup>

In order to assess whether an area is currently attaining the NAAQS, the PM<sub>10</sub> ambient air quality monitoring data collected by the state within the area for the three-year period must meet data completeness criteria, or otherwise unambiguously establish nonattainment according to 40 CFR part 50, appendix K, section 2.3. The ambient air quality monitoring data completeness requirements are met when quarterly data capture rates for all four quarters in a calendar year over a three-year period are at least 75 percent. For purposes of this proposal, we reviewed the data for the 2017-2019 period for completeness and determined that the PM<sub>10</sub> data met the completeness criterion for all 12 quarters at the Yuma Supersite PM<sub>10</sub> monitoring site in the Yuma NAA.<sup>17</sup>

The Arizona Department of Environmental Quality (ADEQ) is the governmental agency

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<sup>14</sup> The clean data determination also applied to the annual PM<sub>10</sub> NAAQS, but that NAAQS was revoked later that year. See 71 FR 61144 (October 17, 2006).

<sup>15</sup> In the same *Federal Register* document, the EPA also determined pursuant to CAA sections 179(c)(1) and 188(b)(2) that the Yuma NAA had attained the NAAQS by the Moderate area attainment date of December 31, 1994. Because that determination was tied to that specific attainment date, it would not be affected by the rescission of the clean data determination proposed in this action.

<sup>16</sup> 40 CFR part 50, appendix K, section 2.3(a).

<sup>17</sup> EPA, AQS "Design Value Report," dated March 31, 2021. This report is included in the docket.

with the authority and responsibilities under the State's laws for collecting ambient air quality data for the Yuma NAA. ADEQ submits annual monitoring network plans to the EPA.<sup>18</sup> These plans discuss the status of the ambient air monitoring network, as required under 40 CFR part 58. The EPA reviews these annual network plans for compliance with the applicable reporting requirements in 40 CFR 58.10. With respect to PM<sub>10</sub>, the EPA has found that the 2018-2020 annual network plans submitted by ADEQ, which reflect the network during the 2017-2019 design value period, met the applicable requirements under 40 CFR part 58.<sup>19</sup> Furthermore, we concluded from our 2018 technical systems audit of ADEQ's ambient air quality monitoring program that the ambient air monitoring network currently meets or exceeds the requirements for the minimum number of monitoring sites designated as SLAMS for PM<sub>10</sub> in the Yuma NAA.<sup>20</sup> ADEQ certifies annually that the data it submits to AQS are quality-assured and has done so for each year relevant to our proposed action, 2017-2019.<sup>21</sup>

Table 1 provides the 2019 PM<sub>10</sub> design value for the Yuma Supersite, the sole regulatory monitoring site measuring ambient PM<sub>10</sub> within the Yuma NAA, expressed as a single value representing the average expected annual exceedances over the three-year period, 2017-2019. The PM<sub>10</sub> data show that the design value is greater than 1.0 estimated annual average exceedances of the 1987 24-hour PM<sub>10</sub> NAAQS. Consequently, the EPA proposes to determine, based upon three years of complete, quality-assured and certified data from 2017-2019, that the Yuma NAA is no longer attaining the 1987 24-hour PM<sub>10</sub> NAAQS.

<b>Table 1 – 2017-2019 Design Value for the 1987 24-Hour PM<sub>10</sub> NAAQS for the Yuma NAA</b>
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<sup>18</sup> See, e.g., “State of Arizona Air Monitoring Network Plan for the Year 2020.” Copies of Arizona’s Annual Network Plans for 2018-2020 are included in the docket.

<sup>19</sup> See, e.g., letter dated November 8, 2019, from Gwen Yoshimura, Manager, EPA Region IX, Air Quality Analysis Office, to Daniel Czecholinski, Acting Director, Air Quality Division, ADEQ. Copies of EPA letters responding to Arizona’s Annual Network Plans for 2018-2020 are included in the docket.

<sup>20</sup> Letter dated April 25, 2019, from Elizabeth Adams, Director, EPA Region 9 Air Division to Timothy Franquist, Director, Air Quality Division, ADEQ, enclosure titled “Technical Systems Audit of the Ambient Air Monitoring Program: Arizona Department of Environmental Quality, April 2 – April 6, 2018,” Network Requirements section, 8.

<sup>21</sup> See, e.g., letter dated April 13, 2020, from Daniel Czecholinski, Director, Air Quality Division, ADEQ, to Gwen Yoshimura, Manager, EPA Region IX, Air Quality Analysis Office. Copies of ADEQ certifications and their respective transmittal letters for years 2017-2019 are included in the docket.

Monitoring site	AQS identification number	Design Value
Yuma Supersite	04-027-8011	5.7

Source: EPA, AQS “Design Value Report,” dated March 31, 2021, 15.

We have also reviewed preliminary 2020 data, which indicate that the Yuma NAA had a 2018-2020 design value of 5.4.<sup>22</sup> This preliminary design value also does not show attainment of the 1987 24-hour PM<sub>10</sub> NAAQS and is therefore consistent with the proposed determination. We also reviewed preliminary data from the Yuma Supersite monitor for 2021, which is not a full year of data.<sup>23</sup> As of March 31, 2021, there were no exceedances in 2021. We note, however, that even with no exceedances in 2021, given the number of expected exceedances in the certified year 2019, plus those in the preliminary year 2020, the 2021 three-year preliminary design value violates the NAAQS and is therefore also consistent with our proposed determination.

### **III. Proposed Action and Request for Public Comment**

Based on our proposed determination that the Yuma NAA is no longer attaining the 1987 24-hour PM<sub>10</sub> NAAQS, we propose to rescind the clean data determination for the Yuma NAA and reinstate the requirements that were suspended under that determination. We anticipate that Arizona’s submission of a new, approvable Moderate nonattainment plan in response to the “SIP call” discussed below would satisfy these obligations.

In addition, we propose to find, pursuant to CAA section 110(k)(5), that the Arizona SIP is substantially inadequate to attain or maintain the 1987 24-hour PM<sub>10</sub> NAAQS in the Yuma NAA. This proposed finding is based both on the most recent monitoring data discussed in section II of this document, as well as longer-term air quality trends in the Yuma NAA. In particular, we note that the Yuma NAA has had a violating design value for the 1987 24-hour PM<sub>10</sub> NAAQSs every year since issuance of the clean data determination in 2006.<sup>24</sup> Collectively, these recent and longer term monitoring data indicate that the current Arizona SIP is

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<sup>22</sup> EPA, AQS “Design Value Report,” dated March 3, 2021.

<sup>23</sup> Id.

<sup>24</sup> Id.

substantially inadequate to attain or maintain the 1987 24-hour PM<sub>10</sub> NAAQS in the Yuma NAA.

In order to address this inadequacy, we propose to issue a SIP call under CAA section 110(k)(5), requiring the State to submit a SIP revision establishing that the Yuma NAA meets the applicable nonattainment plan requirements of the CAA for Moderate PM<sub>10</sub> NAAs.<sup>25</sup> These requirements include: (i) an approved permit program for construction of new and modified major stationary sources;<sup>26</sup> (ii) a demonstration that the plan provides for attainment by no later than the applicable Moderate area attainment date or a demonstration that attainment by that date is impracticable;<sup>27</sup> (iii) provisions for the implementation of reasonably available control measures (RACT) and reasonably available control technology (RACT);<sup>28</sup> (iv) quantitative milestones that will be used to evaluate compliance with the requirement to demonstrate reasonable further progress (RFP);<sup>29</sup> (v) evaluation and regulation of PM<sub>10</sub> precursors;<sup>30</sup> (vi) a description of the expected annual incremental reductions in emissions that will demonstrate RFP;<sup>31</sup> (vii) emissions inventories, as necessary;<sup>32</sup> (viii) other control measures besides RACT and RACT as may be needed for attainment;<sup>33</sup> (ix) contingency measures,<sup>34</sup> and (x) a motor vehicle emissions budget for the purpose of determining the conformity of transportation programs and plans developed by state transportation agencies.<sup>35</sup> The EPA's longstanding

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<sup>25</sup> See CAA section 110(k)(5) ("Any finding under this paragraph shall, to the extent the Administrator deems appropriate, subject the State to the requirements of this chapter to which the State was subject when it developed and submitted the plan for which such finding was made . . .").

<sup>26</sup> CAA section 189(a)(1)(A).

<sup>27</sup> CAA section 189(a)(1)(B).

<sup>28</sup> CAA section 189(a)(1)(C).

<sup>29</sup> CAA section 189(c).

<sup>30</sup> CAA section 189(e).

<sup>31</sup> CAA section 172(c)(2).

<sup>32</sup> CAA section 172(c)(3).

<sup>33</sup> CAA section 172(c)(6).

<sup>34</sup> CAA section 172(c)(9).

<sup>35</sup> 40 CFR 93.102(b)(1). Effective June 27, 2007 (see 72 FR 32295, June 12, 2007), the EPA found adequate for transportation conformity purposes the motor vehicle emissions budgets in the Yuma PM<sub>10</sub> Maintenance Plan (August 2006). However, if we take final action to withdraw the clean data determination and issue a SIP call, we expect also to reverse our previous finding to a finding of inadequacy pursuant to 40 CFR 93.118(f)(1)(vi). Our inadequacy finding for the motor vehicle emissions budget would require transportation agencies to determine conformity using interim emission tests pursuant to 40 CFR 93.119, instead of the current practice of using the past maintenance plan motor vehicle emissions budgets as part of a budgets test.



guidance on these statutory requirements is embodied in the “The General Preamble for Implementation of Title I of the Clean Air Act (CAA) Amendments.”<sup>36</sup>

We propose to require Arizona to submit this Moderate nonattainment plan SIP submission within 18 months of finalizing the SIP call, which is the maximum time permitted under CAA 110(k)(5). This is longer than the original Moderate nonattainment plan submittal deadline of one year from the date of the 1990 CAA Amendments under CAA 189(a)(2)(A), but is in line with the deadline specified in CAA 189(a)(2)(B) for other PM nonattainment areas.<sup>37</sup> Similarly, because the original maximum attainment date for this area was December 31, 1994 (approximately four years from the original designation),<sup>38</sup> we propose, pursuant to CAA 110(k)(5), that the new attainment date shall be as expeditious as practicable, but no later than December 31, 2025.<sup>39</sup> In line with this proposed attainment date, we propose to require implementation of RACM/RACT by no later than January 1, 2025.<sup>40</sup> Lastly, in the event we finalize the above proposals, we propose to reverse our previous budget adequacy finding to a finding of inadequacy pursuant to 40 CFR 93.118(f)(1)(vi).

The EPA is soliciting public comments on the issues discussed in this document. We will accept comments from the public on this proposal until the date listed in the **DATES** section above. We will consider these comments before taking final action.

#### **IV. Statutory and Executive Order Reviews**

This action proposes a determination that the Yuma NAA is no longer attaining the 1987 PM<sub>10</sub> NAAQS, based on the EPA’s review of air quality data, and a SIP call under section

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<sup>36</sup> 57 FR 13498 (April 16, 1992).

<sup>37</sup> CAA section 189(a)(2).

<sup>38</sup> CAA section 188(c)(1).

<sup>39</sup> CAA section 110(k)(5), “the Administrator may adjust any dates applicable under such requirements as appropriate (except that the Administrator may not adjust any attainment date prescribed under part D of this subchapter, unless such date has elapsed).”

<sup>40</sup> Given that exceedances of the 1987 24-hour PM<sub>10</sub> NAAQS in the Yuma NAA are often associated with high wind that could potentially qualify for treatment as “natural events” under the EPA’s Exceptional Events Rule, we recommend RACM/RACT be fully implemented as early as January 1, 2023, so that anthropogenic sources would be reasonably controlled during the three-year period preceding the proposed attainment date. See, e.g., 40 CFR 50.14(b)(5)(ii) (“The Administrator will consider high wind dust events to be natural events in cases where windblown dust is entirely from natural undisturbed lands in the area or where all anthropogenic sources are reasonably controlled . . .”).

110(k)(5) of the CAA. Upon a finding that a SIP is deficient, section 110(k)(5) of the CAA directs the Agency to require the state to correct the deficiency. Therefore, this action does not impose additional requirements beyond those required by the CAA itself. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP obligations discussed herein do not apply to Indian Tribes and thus this proposed action will not impose substantial direct costs on Tribal governments or preempt Tribal law. Nonetheless, the EPA intends to notify the Cocopah and Fort Yuma (Quechan) tribes, which have lands within the Yuma NAA.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate Matter, Pollution.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: May 24, 2021.

Deborah Jordan,  
Acting Regional Administrator,  
Region IX.

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